04-20040094.LOF

DEPARTMENT OF STATE REVENUE

LETTER OF FINDINGS NUMBER: 04-0094
Sales/Use Tax
Periods of 2001 Through 2002

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ISSUES

I. Sales/Use Tax: Equipment

Authority: 45 IAC 2.2-3-20; IC 6-8.1-5-1(b); 45 IAC 15-5-3(b)(8); 45 IAC 15-11-2.

The taxpayer protests the proposed assessment of tax on equipment.

STATEMENT OF FACTS

The taxpayer runs a weekly newspaper. An administrative hearing was scheduled for January 12, 2006. Neither the taxpayer nor its representative attended, nor did they telephone to re-schedule. Taxpayer's representative later faxed a letter to the Department withdrawing from representation. A telephone hearing was then conducted with the taxpayer on January 23, 2006. More facts will be provided below as needed.

I. Sales/Use Tax: Equipment

DISCUSSION

As noted, the taxpayer runs a weekly newspaper. The items at issue the Auditor describes thusly:

> The taxpayer purchased operating supplies and equipment during the audit period and failed to pay sales tax at the point of purchase or remit use tax on these taxable transactions. These purchases included computers, printers, and other equipment that was used *both* in the production of the newspaper and in the accounting for the business.

(*Emphasis added*).

The methodology the Auditor used for assessing the equipment was that "the office equipment was multiplied by the taxable percentage of 10 percent."

Taxpayer takes issue with the percentage. In a letter to the Department, the taxpayer states there "are three computer terminals used in direct production of [the] newspaper, as well as two … printers." Additionally the taxpayer states: "One of these machines, a Macintosh G4, as well as one of the printers it is connected to are used no more than 6 hours per month to generate monthly billing statements. None of the other computers is loaded with the software necessary to produce out billing."

In the correspondence the taxpayer also notes "Only one machine is involved, and less than the 10 [percent]...." The final percentage of non-production work that the taxpayer calculates for that one machine is ".0375[percent]." Taxpayer also lists in correspondence various specific items that it believes are tax exempt. During the hearing the taxpayer mentioned that a fax machine was wrongly assessed use tax, since, per the taxpayer, sales tax was paid at the time of purchase of the fax machine. No documentation was provided to that effect, and it does not seem clear from the Audit Report that use tax on the fax machine was even assessed in the audit process.

Since "accounting" would fall outside the scope of the production exemptions, regulation 45 IAC 2.2-3-20 becomes applicable, which states in part:

> All purchases of tangible personal property which are delivered to the purchaser for storage, use, or consumption in the state of Indiana are subject to the use tax.

Taxpayer asserts that various items are not taxable (port hub modular, toner cartridge, etc.) but does not develop its argument to show that the items are in fact used in the production process. Likewise for the asserted taxable percentage—the taxpayer fails to develop its argument. And it is the taxpayer that bears the burden of proof under IC 6-8.1-5-1(b) and 45 IAC 15-5-3(b)(8). (It should also be noted a negligence penalty was imposed, but the taxpayer did not make any arguments regarding the penalty and is thus denied on the penalty too—again, *See* IC 6-8.1-5-1(b) regarding the taxpayer's burden of proof, and 45 IAC 15-11-2 regarding the penalty).

FINDING

The taxpayer's protest is denied.

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